IN THE CIRCUIT COURT OF
THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 94-08273 CA (22)

HOWARD A. ENGLE, M.D.,
et al.,

Plaintiffs,

vs.

R.J. REYNOLDS TOBACCO
COMPANY, et al.,

Defendants.
_____/

Miami-Dade County Courthouse
Miami, Florida
Monday, 9:30 a.m.
January 25, 1999

TRIAL - VOLUME 188

The above-styled cause came on for trial before the Honorable Robert Paul Kaye, Circuit Judge, pursuant to notice.

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APPEARANCES:

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CLIFFORD DOUGLAS, ESQ.
On behalf of Plaintiffs

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SEAN P. WAJERT, ESQ.

On behalf of Defendant Philip Morris

COLL DAVIDSON CARTER SMITH SALTER & BARKETT
NORMAN A. COLL, ESQ.
On behalf of Defendant Philip Morris

ZACK KOSNITZKY
STEPHEN N. ZACK, ESQ.
On behalf of Defendant Philip Morris

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On behalf of Defendant R.J. Reynolds

JONES, DAY, REAVIS & POGUE.
RICHARD M. KIRBY, ESQ.
DIANE G. PULLEY, ESQ.
On behalf of Defendant R.J. Reynolds

KING & SPALDING
MICHAEL RUSS, ESQ.
RICHARD A. SCHNEIDER, ESQ.
On behalf of Defendant Brown & Williamson

CLARKE SILVERGLATE WILLIAMS & MONTGOMERY
KELLY ANNE LUTHER, ESQ.
On behalf of Defendants Liggett Group
and Brooke Group

SHOOK HARDY & BACON
EDWARD A. MOSS, ESQ.
WILLIAM P. GERAGHTY, ESQ.
On behalf of Defendant Brown & Williamson
JAMES T. NEWSOM, ESQ.
On behalf of Defendant Lorillard

DEBEVOISE & PLIMPTON
ANNE COHEN, ESQ.

JOSEPH R. MOODHE, ESQ.
On behalf of Defendant The Council for Tobacco Resear

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APPEARANCES (Continued)

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On behalf of Defendant Lorillard

MARTINEZ & GUTIERREZ
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On behalf of Defendant Dosal Tobacco Corp.

and Tobacco Institute

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AARON MARKS, ESQ.
NANCY STRAUB, ESQ.
On behalf of Defendants Liggett Group
and Brooke Group

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I N D E X

WITNESS	PAGE
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E X H I B I T S

PLAINTIFFS' EXHIBITS	OFFERED PAGE	ADMITTED PAGE	FOR ID PAGE
None			

E X H I B I T S

DEFENDANTS' EXHIBITS	OFFERED PAGE	ADMITTED PAGE	FOR ID PAGE
None			

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(Whereupon, the following proceedings were had:)

THE COURT: Good morning, all.

Just to clarify the record, my clerk tells me four of the jurors have made inquiries as to how much longer is this going on. I have no way of knowing, but they're getting a little bit concerned, I think.

There was something on T.V. last night on Fox that I saw, a report on a new study that just came out regarding addiction-related and tied into genetics; that there's something that triggers a gene in some people, and they're isolating this, so that's why some people can stop and some people can't, because it triggers a gene. So I have to make inquiry.

MR. ROSENBLATT: Was that part of a news report?

THE COURT: A news report, something new on tobacco.

MR. ROSENBLATT: Not a special program?

THE COURT: Not a special program, but with in the news, one of those little special things: "We've learned today that," and they showed people smoking cigarettes and they showed -- well, they didn't show much of anything, other than the fact that there was

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study and I tried to write down where it came from.

MR. ROSENBLATT: Usually you'll see something

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in the paper.

THE COURT: That's what I thought.

MR. SCHNEIDER: There actually was. I got it out of the USA Today.

MR. ROSENBLATT: From what journal?

MR. SCHNEIDER: From USA Today.

THE COURT: That's what I've got to find out. National Cancer Institute.

What it says is: Three years from now physicians in stop-smoking programs will rely on DNA tests to help...predicts a top National Cancer Institute scientist. The new report in Health Psychology shows adults with certain variants of two genes are half as likely to smoke...both variants are thought to promote availability of Dopamine, a feel-good brain chemical, says study author, Caryn, C-A-R-Y-N, Lerman of Georgetown University Medical Center.

MR. ROSENBLATT: I'm going to get USA Today, Judge, and look at it.

THE COURT: I don't have a page number on here. But, anyway, that's what it is.

MR. ROSENBLATT: Judge, in view of a query by the jury, it might be a good time to tell the jury that

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we're kind of in a winding down process now in terms of

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the plaintiff resting, and it might also be a time to tell them that they'll have Wednesday, Thursday and Friday, and that once the defense starts putting on their case, it will be witness after witness; there won't be these gaps.

THE COURT: But we're not going to have a lot of deposition testimony on the defense side?

MR. HEIM: No, there won't be much.

THE COURT: Some, but not as much as we have here.

Figure about the first week in February for you?

MR. ROSENBLATT: Yes.

THE COURT: About that?

MR. ROSENBLATT: Yes.

MR. HEIM: Well, I don't know that I could feel comfortable telling them it will be faster. It may well be, but I think we could tell them that the plaintiffs are winding down their case, the defense will of course start their case at the end, and there won't be as many of these deposition things. I think we can tell them that.

THE COURT: We can do that. We do have

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another problem, of course, because if we resolve this first phase, still got the second phase, which they're

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unaware of at this point, and that's going to present a problem for all of us.

Because I thought that, well, if we wind down this -- let's assume you get to the end and we get to a jury situation, what do we do with the alternates? We've got six people going to sit there and hear the case. The alternates will not. If those six people reach a decision, then you bring back the same jury, bring back the same six, but you have no alternates for the next phase.

MR. HEIM: This is probably a subject that we ought to take up toward the end of the week.

THE COURT: I thought about it the other day and I thought: Oh, my God, what are we going to do? You can't get new alternates and you can't get a new jury because this jury has heard the facts. Can't bring back alternates, because they didn't hear the deliberations. So that's a problem.

All of a sudden these things just come out of the blue.

Well, we've got the best minds in the world

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right here in this room addressing these topics.

MR. ROSENBLATT: Look how the best minds in Congress have managed to screw everything up.

THE COURT: Off the record.

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(Discussion off the record.)

THE COURT: Okay. We have to begin with who?

MR. ROSENBLATT: Dr. Spears on video.

THE COURT: I went through McAllister over the weekend. I had a little problem with one of them. We might as well address that now. I didn't do McAllister; I did the other one, Gertenbach. And I looked at Holbrook. But I did have a problem with McAllister, because I couldn't figure out initially the color-coding.

MS. COHEN: Judge, which one are you talking about now, McAllister?

THE COURT: Let's go with McAllister.

MS. COHEN: Which McAllister? There are two, Your Honor.

THE COURT: I'm not talking substance; I'm talking color-coding.

I couldn't figure out whether the color-coded lines meant objections or designations. See, my impression was that if you were going to designate or counterdesignate, it would be green. Then anything that was not green was an objection by one side or the other. If that's correct, that's okay, but I've got

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some with multiple lines; for example, on Page 30.

MS. COHEN: Which deposition, Your Honor, t
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date of the deposition?

THE COURT: December 6th. Let's look at Page 30, starting with Line 7 through 21. There is no designation for the plaintiff, but I've got what appears to be a brownish mark and a purple mark.

MS. COHEN: I believe, Your Honor, that the purple mark is the plaintiffs' additional designation, the designations we received just around, I guess, a week, 10 days ago, and that the brown would be our objection. I was looking through our things. I can check that.

THE COURT: See, I'm always looking at yellow as the plaintiffs' designation.

MS. COHEN: My understanding was that we were using pink or purple. Kelly has corrected me for the crossdesignations by the plaintiff.

THE COURT: They were using pink as their objection to your counterdesignation or whatever. Now I've got yellow, I've got orange, I've got purple, I've got pink, I've got green, I've got brown. And it was very confusing going through who wants what.

MS. COHEN: Well, we don't want any of it.

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That’s a good way to start.

THE COURT: So I never got through the whole thing. I got to that point.

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MR. ROSENBLATT: That's probably good, because I'm learning now, what Susan did was she greatly reduced the designations from the 1993 deposition. So we're primarily using the August 5, 1997 deposition of McAllister. However, there are limited areas of testimony from the 1993 deposition that are highly relevant and they don't duplicate or present a changed position.

THE COURT: So as we go to the August 5th, '97 depo, and just for example on Page 78, again, I've got a brownish mark and a purple mark, that would be the purple would be your counterdesignation or additional designations for plaintiff and the objection thereto?

MS. LUTHER: Exactly.

MR. ROSENBLATT: We're going to resubmit, Judge, the depositions to you, color-coded accordingly.

THE COURT: Usual color-coding: yellow for you, green for counter, and whatever other color for objections. Doesn't matter who objects.

MR. ROSENBLATT: Like I say, there will be relatively little for the '93.

MS. COHEN: Stanley, have we gotten those designations?

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MS. BERGER: We faxed it this morning, but

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I'll be happy to give it to you now.

THE COURT: Gee, I'm glad I didn't read it.

(Discussion off the record.)

THE COURT: Is Martinez here?

MR. MARTINEZ: Yes.

THE COURT: There was the exchange of letters between you and Susan.

MR. MARTINEZ: I hope it's over.

THE COURT: I had anticipated that it would be over.

(The jurors entered the courtroom.)

THE COURT: Good morning, folks. I know traffic is difficult coming either up from the south or down from the north, especially when you have an accident on the road, probably one of the reasons one of you or more of you were held up this morning.

Over the weekend, since we last talked, has anybody come across any information from any media source which would in any way affect your view of the case, your outcome of the case, or any information that you may have gleaned outside the courtroom regarding any issues in this case? Anybody at all?

JURORS: No, sir.

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THE COURT: I understand you are making some inquiry of the clerk as to how much longer we're going

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to be here.

Well, Bobby Burns wrote once: The best laid plans of mice and men. You know what the rest of that is.

So although we anticipated, when we first talked with you folks, a certain time schedule, and as you can see as we go along, it doesn't necessarily follow that we can keep that schedule. But we're pretty much on track. The plaintiff is in the wind-up stage of its case and expects to possibly finish the plaintiffs' case, say, the first week of February, thereabouts. This is what, the 25th of January. So we're getting very close.

Then, of course, the defense will have its case and they will be able to put on their case. We do not anticipate as many, say, deposition-type witnesses on the defense case. I think there will be more live people than there are depositions, and that will save us a lot of time.

So time-wise, that's where we're going. And, of course, a lot of information has already been produced during the plaintiffs' case, so I think we're

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well on our way of getting to the end of this proceeding.

So that’s for your benefit. And I can’t gi

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you a date and I can't give you a time. But we are working. We're very aware of it and very cognizant of it.

But as I told you, there's so much to be done in this case and we're getting it done piece by piece rather than willy-nilly. I think it's much better to crawl rather than run, because if you crawl, you can catch mistakes before they're made. So we'll do the very best we can. So if that doesn't satisfy your answer, that's the best I can do.

Okay. We're doing a deposition by video?

MR. ROSENBLATT: By video, Judge. This is the CEO of Lorillard taken in New York. Alexander Spears, S-P-E-A-R-S, taken in New York City, April 15, 1997.

(The videotaped deposition of Alexander Spears, III, Ph.D., was shown to the jury as follows:)

Q. Please tell us your name and your business address.

A. Alexander White Spears, III. Business address is 2525 East Market Street, Greensboro, North Carolina, 27420.

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Q. By whom are you employed?

A. Lorillard Tobacco Company.

Q. In what capacity?

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A. I'm chairman and chief executive officer.
Q. And how long have you occupied those dual positions?
A. About a year and a half, I guess.
Q. What was your job title immediately before assuming the dual positions?
A. Vice-chairman and chief operating officer.
Q. Who was the chairman when you were vice-chairman?
A. Andrew Tisch.
Q. What, if any, is Andrew Tisch's present relationship with Lorillard Tobacco Company?
A. He doesn't have a direct relationship. He is, he has a position with Loews Corporation.
Q. And what is the relationship between Loews Corporation and Lorillard Tobacco Company?
A. Lorillard Tobacco Company is a subsidiary.
Q. Is Lorillard Tobacco Company a wholly-owned subsidiary of Loews Corporation?
A. Yes, it is.
Q. Okay. How long have you been with Lorillard?
A. Since 1959.
(Fast forwarding.)
Q. How many billions of cigarettes does

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25 Lorillard sell in a year?

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A. Last year 40.9 billion.
(Fast forwarding.)
(The videotaped deposition was paused.)
THE COURT: What's happening? What happened?
VIDEOGRAPHER: The first tape seems to have run out. There's a break indicated, if you're reading along.
THE COURT: What page were we at?
VIDEOGRAPHER: Page 8, Line 20. I just want to see if Tape Two continues at that point.
THE COURT: There wouldn't be a break so early.
MR. ROSENBLATT: This is way ahead.
VIDEOGRAPHER: No. It's way ahead.
THE COURT: Wait a minute. I really don't understand what you're talking about.
MR. ROSENBLATT: Apparently Tape One just ended after just a few pages.
VIDEOGRAPHER: The indication on the front cover of the tape says Tape Number 1, Part 1.
THE COURT: Okay.
VIDEOGRAPHER: I then go to what Tape Two is.
THE COURT: What does Tape Two say?
VIDEOGRAPHER: Tape Two started somewhere

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much further along in the transcript.

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THE COURT: In between we don't have anything?

MR. HEIM: Can you fast forward ahead and see whether there's anything on that tape?

VIDEOGRAPHER: I was fast forwarding. I can go back and continue to fast forward and see if there's anything further.

THE COURT: What does it say? What is on that tape prior to the start of this deposition? Do we know?

VIDEOGRAPHER: I rewound it to the beginning and started from the beginning of the tape.

THE COURT: And from the beginning it only gives you eight pages?

VIDEOGRAPHER: It only gives us to Page 8, Line 20. So I'm going to fast forward through here and see if there's anything else.

THE COURT: Well, worse come to worst, we could just read it.

See what I mean by the best laid plans of mice and men?

VIDEOGRAPHER: There's nothing.

MR. ROSENBLATT: I'll just call the office.

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THE COURT: Let’s take a short break, folks ,

while we get this thing straightened out. As I say,

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the worst thing that could happen is we'll read it.

(The jurors exited the courtroom.)

MR. ROSENBLATT: I mean, if worst came to it, if my office doesn't have it --

THE COURT: Well, the problem is it wasn't edited. So they have a copy.

MR. HEIM: Your Honor, we think we have a copy, but it's back at our office, not in the courtroom.

THE COURT: Your office is where?

MR. HEIM: Back at First Union Center.

THE COURT: That's the furthest we'd have to go. You may have a copy at your office across the street. Let's double check it, see what happens.

(A brief recess was taken.)

THE COURT: I guess what happened was when they took the break, restarted, they didn't push the record button.

VIDEOGRAPHER: No. I think what happened is he had a problem with the tape. Because it picks right up in the correct spot. And I think he either had a problem -- either his tape was jamming in the machine, so he put another tape in to be sure.

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THE COURT: Whatever.

VIDEOGRAPHER: But instead of labeling 1, 2
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3, 4, he labeled them 1 Part 1, 1 Part 2.

THE BAILIFF: Bringing in the jury.

(The jurors entered the courtroom.)

THE COURT: Okay. I think we got it all straightened out. Apparently they had some trouble with the tape and didn't realize until we started to play it, and we have a back up copy which we now have and we're ready to go. Okay.

(The videotaped deposition was continued as follows:)

Q. All right. Which Lorillard brands are lowest in tar?

A. Well, the so-called lights or ultra lights would be the lowest. And there would be the shorter versions of True, Kent 3, Triumph would be the lowest, and I think they're all about the same.

Q. If you put the lowest brand of True up against the highest brand of Newport, speaking of tar, does that mean that True is less hazardous to the smoker's health than Newport?

A. No, I wouldn't say that.

Q. What is the significance --

Okay. Dr. Spears, the court reporter is going --

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25 (Fast forwarding.)

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THE DEPOSITION COURT REPORTER: What is the significance to the consumer from a purely health standpoint of getting a low tar cigarette over a high tar cigarette?

A. I don't know that I can say there is a difference in terms of the cigarettes. It would also depend on how an individual smoked the cigarette in terms of the amount of tar that the individual would get from a cigarette.

So there would be a lot of factors that would go into any determination as to the amount of tar and amount of smoke an individual would receive.

Other than that, to me that is a difference that the consumer would perceive, and I don't know that does relate to any health consequence.

Q. So as I'm understanding you, whether the smoker gets a lot of tar, just to put it generically, a lot of tar or a very small amount of tar, as far as you know there are no health consequences either to a lot or to a little?

A. That's basically correct. It's obvious, however, that if one postulated a health consequence,

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that if there was a lesser dose or lesser amount, one would extrapolate that to be a lesser impact on the individual.

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Q. But that would be in the area of speculation, as far as you're concerned?
A. Be the same as smoking more or less cigarettes.
Q. Now, I'm referring to you as doctor, having seen your curriculum vitae, you are not a medical doctor, correct?
A. That's correct.
Q. You have a Ph.D in what?
A. In chemistry.

(Fast forwarding.)

Q. Dr. Spears, I think immediately before there was a problem with the video, I had asked you if your warnings on packages of cigarettes are true and accurate?
A. I think that's a difficult question to ask. The warnings represent conclusions of which I am not in agreement with.
On the other hand, I can't say that they're false.
Q. Okay. One of the warnings says: Surgeon General's Warning: Smoking causes lung cancer, heart disease, emphysema and may complicate pregnancy.
Does that warning fall in the category you'

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25 just described: You don’t agree with it, but on the

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other hand, you can't say it's false?
A. That's correct.
Q. There's at least one warning you agree with, isn't there?
A. Which warning?
Q. Cigarette smoke contains carbon monoxide?
A. Yes, I agree with that.
Q. Okay. Quitting smoking now greatly reduces serious risks to your health; do you agree with that warning?
A. Same answer to the first, yes.
Q. You don't agree with it, but you can't say it's false?
A. That's correct.
Q. Smoking by pregnant women may result in fetal injury, premature birth and low birth weight. That falls in the same category?
A. It says it may. I mean, I think anything is a possibility. I don't agree that the warning represents a finding that it does, no.

(Fast forwarding.)

Q. Have you done any studies or are you able to enlighten us at all on the number of smokers who would like to quit smoking, but are unable to, because they

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consider themselves to be addicted?

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A. Again, I do not know what fraction, but I think it's one matter whether people say they want to quit and don't, and whether they really want to quit, are two different things. And I think it would be very difficult to know the true feelings of an individual regarding smoking.

Q. What are the products on the market that are designed to help a smoker who wants to quit, but is unable to quit on his own, needs help?

A. What are the products?

Q. Such as nicotine gum?

A. Well, it's my understanding there's a nicotine gum and a nicotine patch. There may be an aerosol. Those are the only products that I'm aware of.

Q. Is nicotine addictive?

A. Well, whether or not it's addictive depends on your definition of addiction. I think any reasonable definition of addiction, I would come to the conclusion that nicotine is not addictive in the sense that I think reasonable definitions of addiction must include the idea of euphoria, lack of ability to reason

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when under the influence of a substance. In other words, some sort of intoxication, particularly lack of ability to make good judgments. These are all things

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that I think are reasonable in terms of a definition of addiction.

Nicotine does not fit that kind of a definition for addiction. It's very much like caffeine. It has some pharmacological effects, but they're very mild relative to the kinds of things that I normally think of as addicting drugs or addicting substances.

Q. Do you agree that there's a category of smokers who sincerely want to quit, they've made up their mind to quit. Their spouses, their kids, their good friends, their doctor tell them they are jeopardizing their health by continuing to smoke; they have tried to quit and they can't?

A. I am not familiar with anyone like that.

Q. Well, even though you're not familiar with anyone like that on a personal basis, is apparently what you're saying, would you agree that there is a category of people who fit that description?

A. Maybe. You know, there's also a category of people, I'm sure, that, let's say, bite their fingernails, who want to quit biting their fingernails, have been coerced, and everything else, to quit, and they continue to bite their fingernails. I don't

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consider that an addiction, but some people find it

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enormously difficult, so they say.

Q. No one --

A. And by their actions it would appear so.

Q. No one ever got lung cancer from biting their fingernails?

A. No, but I'm just pointing out to you there are certainly habits that are very difficult to break. I don't think -- that certainly doesn't mean that they're addicting.

Q. Is it your position that any smoker, even if they smoked three packs a day for 30 years, if they sincerely make up their mind and they have a conviction that they want to quit and they're serious about it, that they can quit on their own without any help?

A. I would believe that, yes.

(Fast forwarding.)

Q. So what is Lorillard's strategy, what is your strategy as the president and CEO to replace all these quitting smokers?

A. We have no strategy to replace smokers.

Q. Why do you advertise?

A. Try to get people to switch to our brands.

Q. How successful is that?

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A. Well, Newport is a growing brand, so in that sense it is successful.

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(Fast forwarding.)

Q. My understanding of advertising in general is: Buy our product. Doesn't matter to us whether you're switching from another product. We want people that have never used the product to start using it.

So I'm simply saying -- obviously you're saying that tobacco advertising is different. You don't advertise to people that have never used your product, you only want to get switchers.

I'm asking you if you can cite me to any other industry or business in America that doesn't advertise for new customers?

A. I don't know what the purpose of other companies' advertising is and how they view it.

My first judgment is that the alcohol -- alcoholic beverage industry I don't think is advertising to new customers. Again, I think they're looking at the switching, established market.

I think you would -- I don't know what the number of new customers are in the tobacco industry, but I think you would go broke very quickly if you simply targeted that group. There aren't that many starting smoking every year. You could never have a brand on that basis. It's just not done.

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25 The advertising is to try to capture a shar
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of the market that's out there.

Q. How many people do start smoking each year?

A. I don't know. But it's a relatively small number. If sales are constant, as they have been for the last couple of years in this country, I would say the people who quit are about equal to the people who start.

Q. Would you agree that the great majority of new smokers are young smokers?

A. I think that has been published, yes.

Q. You know, based on your knowledge of the tobacco industry, you would agree, would you not, that the great majority of smokers begin smoking certainly when they're under 21?

A. I don't recall the precise breakdown of age groups, but certainly there are few people in the older age groups that begin to smoke for the first time.

(Fast forwarding.)

THE WITNESS: They seem to be to me in the, oh, 25 age group, yes, and older.

(Fast forwarding.)

Q. What was A Frank Statement to Cigarette

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Smokers intended to accomplish?

A. What was it intended to accomplish? I didn’t write it and I didn’t publish it and I wasn’t there, so

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I can't give you the intent of the authors. So in that sense I can't answer your question.

I can read what it says, but I can't tell you the intent.

Q. When have you read it most recently?

A. Probably the last time I was deposed. Maybe six months ago.

Q. What was The Frank Statement to Cigarette Smokers in response to, if you know?

A. I believe it was in response to some of the published scientific information at that time or just before that time. One was, I think, the Graham Wynder mouse skin painting and epidemiological study that had been -- had come out shortly before that.

Q. Do you remember what year it was published?

(Fast forwarding.)

Q. The Frank Statement?

A. Approximately, but not perfectly, no.

Q. Approximately?

A. I think '53, '54.

Q. Having read it, would you agree that one of the thrusts of The Frank Statement to Cigarette Smokers was that the tobacco industry was going to spend some

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money on scientific research?

A. That would be one of the thrusts, yes.

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Q. It's still the position of the tobacco industry today, 1997, isn't it, that more research is needed on the question of whether cigarette smoking causes cancer or other diseases?

A. That more research is needed, yes. I think only research can resolve these issues.

Q. Well, what has -- has the research that's been conducted by the tobacco industry or funded by the tobacco industry from 1954 up until the present time answered the question of causation in any definitive way?

A. Well, the research supported by the tobacco industry I think has been -- has contributed significantly to the understanding of the diseases that we're talking about, and until we understand these diseases, I don't think there will be a resolution to the hypothesis that relates to whether or not cigarette smoking causes disease.

These are very complicated diseases. The tobacco industry is not the only research, or not the only one supplying money for research on these diseases. It's a national commitment through the National Cancer Institute; Heart, Lung and Blood

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Institute.

These are major, major programs, and we are

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at this point in time, still unable to understand the se diseases in terms of how they occur and what are the agents that cause them or factors that cause them.

Q. And for all you know that will be the situation 25 years from today?

A. Oh, I don't think so. I think that science is moving at a pace now that there will be an understanding of these diseases in the foreseeable future.

(Fast forwarding.)

Q. Let's say a man drinks a fifth of vodka eve ry night for 10 years and he gets cirrhosis of the liver . Would you be satisfied that the vodka caused the cirrhosis, or would you need to study the furniture i n his house as possibly explaining the cirrhosis?

A. Furniture in his house?

Q. Yes.

A. I would see no plausibility to the furnitur e in his house at this point. On the other hand, there may be other causes of cirrhosis of the liver, and certainly everyone who drinks alcohol does not get cirrhosis of the liver. I am not an expert on this subject, but I would certainly think there are other

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factors that could lead to cirrhosis of the liver.

Q. What would you need to know about this guy,

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who drank a fifth of vodka every night for 10 years and had cirrhosis of the liver, what other information would you need to say that obviously the vodka caused the cirrhosis; I accept that?

A. Well, I would want to -- cirrhosis I guess in my judgment is a response basically to toxins and detoxifying materials in the liver, and overburdening that organ with respect to toxins.

I would want to know what other materials, other than foods, that this individual was ingesting over this -- over time. I would want to know if, and I don't know this, if cirrhosis of the liver is caused by any viral infections. I would want to look at all of the possible other agents that could bear on this.

Q. What is the relationship between nicotine levels and tar levels?

A. What is the relationship?

Q. Yes.

A. I think there is a very close correlation between tar and nicotine as measured by the Federal Trade Commission procedure that I described earlier.

As a matter of fact, I did do a correlation

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between the two, and the correlation co-efficient for the year, I believe 1994, maybe 1993, was .975, which is very near a perfect correlation, which is 1. So

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there is an extraordinarily high degree of correlation between the two.

Q. You will recall that when you testified in front of Congress -- when was that, in '94?

A. '93, '94 -- '93, '94.

(Fast forwarding.)

A. And one of the trends that I described was the increasing number of low tar, low nicotine cigarettes. Further analysis of those cigarettes indicated that companies were using more flavorful tobaccos in these cigarettes. And by more flavorful, I mean basically tobaccos that have higher degrees of aroma and result in more acceptable end products.

A byproduct of the tobaccos that have higher aromas and taste is that they have higher nicotine. And that was an indication in the paper that I had written, that there was tendency to use tobaccos with higher nicotine content in these very low tar, low nicotine cigarettes.

(Fast forwarding.)

And I had an opportunity to try to explain to him on a second occasion that he had misinterpreted the information; that there was no correlation between the

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nicotine level of the tobacco and the nicotine level in smoke. Smoke was being moderated by other factors, in

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other words, the filter, ventilation of the cigarette, length of the cigarette, amount of tobacco in the cigarette and so forth.

He didn't seem to want to accept that as a thesis, and handed me a paper by Neil Benowitz, as I recall, which described exactly the same thing: that there was no correlation between tobacco nicotine and the smoke yield of nicotine. And I read that back to him saying: What you handed me is exactly what I've been telling you, and it comes from this individual.

So I think it was a grand misunderstanding on his part or his staff's part, and somewhat of an unwillingness to accept the idea that there wasn't something submerged or not clear regarding what I had testified to.

I think it was straightened out. At least to my satisfaction I was able to explain in detail and point out a literature reference that supported exactly what I was saying.

(Fast forwarding.)

Q. Do you know Bennett LeBow?

A. I don't believe I've ever met him. I know

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who he is.

Q. Okay. He owns another tobacco company, Liggett, correct?

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A. That's correct.

Q. Now, he says that -- in recent days he has said that cigarette smoking causes cancer.

You've never spoken to him about how he reached that conclusion?

A. No, I have not.

(Fast forwarding.)

Q. Is it fair to say that Lorillard has consistently fought bans on smoking, whether it be in restaurants or in office buildings or in governmental buildings, generally speaking, you have fought those kind of bans?

A. We have advocated for a reasonable policy, and we've advocated to the idea that business owners should have the prerogative of setting policies regarding their business.

Q. And you advocate those policies through who? Do you have a separate firm? Does the Tobacco Institute take care of that for you?

A. On occasion, where it's been a local matter where Lorillard has operated, we have had testimony by our employees, someone in our organization. We provide data from people in our organization. Other than tha

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I don’t recall an instance where we have been an advocate one way or the other.

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(Fast forwarding.)
Q. Number 3, where The Frank Statement says that there is no proof that cigarette smoking is one of the causes of lung cancer, do you agree with that statement?
A. That there is no proof --
Q. That cigarette smoking is one of the causes of lung cancer?
(Fast forwarding.)
Q. And I'm simply asking you at this point, do you agree with the statement that there is no proof that cigarette smoking is one of the causes of lung cancer?
(Fast forwarding.)
A. I would not write this statement in these terms today. I would indicate that there is data, but not adequate data to conclude that cigarette smoking is a cause of cancer.
Q. Well, is it an -- I understand that your wording would be different --
A. If no proof means no data, that wouldn't be correct.
Q. Okay. But you have taken the position under oath many times in the past substantially, although y

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as you have expressed it is that it has not been scientifically proven that cigarette smoking causes lung cancer?

A. Correct. And at the same time it's not proven that it doesn't cause.

Q. And that's your position today?

A. That's correct.

Q. As a president and CEO of Lorillard, is your primary responsibility to your stockholders?

A. Well, that's one responsibility.

Q. But, I mean, pick your number one, main. Is it to your stockholders, to your customers, to your employees?

A. I'm not sure I have one. I think I have responsibility to the shareholders, responsibility to the employees, responsibility to the customers, responsibility to our vendors, our employees, yes, a whole community of individuals, to the consuming public in general in terms of our customers.

Q. You don't have a responsibility to someone who is a nonsmoker and who thinks your product causes disease and death, you don't have responsibility to that person, do you?

A. I think we have responsibility to the

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25 community in general and that would include those

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individuals.

Q. Now, going down the first column, after Number 4 where A Frank Statement to Cigarette Smokers says: We accept an interest in people's health as a basic responsibility paramount to every other consideration in our business, do you agree with that statement today?

A. As it would relate to the use of the product, yes. I wouldn't agree with it in any other sense, no.

Q. But you're really not much help to the consumer in that respect, are you, when your bottom line is maybe it does cause disease and maybe it doesn't cause disease, because that's really what your bottom line is on the issue of cigarette smoking and health, isn't it?

A. Well, and at the same time we're carrying warning notices to the consumer for them to make their own judgment, yes.

Q. The next sentence says: We believe the products we make are not injurious to health. Do you agree with that statement today?

A. I think that's a very difficult statement to make. A positive or a negative cannot be proven in

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this business.

To say that any product, whether it’s tobac co

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product or otherwise, is not injurious, can only be in the context as the evidence does not support it being injurious.

(The videotape deposition was paused.)

Q. Are you comfortable with that statement, that the evidence does not support the conclusion that our products, Lorillard's products, are --

A. Injurious?

Q. -- injurious?

A. Yes, I am.

Q. Okay.

(Fast forwarding.)

Q. Does Lorillard conduct inhouse research itself on the subject of smoking and health?

A. That's a very broad, broad subject from a scientific research point of view.

I would say yes, but qualify the definition as important, exactly what the definition is.

Q. Does Lorillard conduct any research inhouse specifically which addresses the question, do your products cause cancer in humans?

A. I think much of what we do is relevant to that question or have done in the past, yes. At least the research was directed to that area. Much of it has

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been conducted external to our organization.

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Q. Have any of your studies implicated tobacco in any way as being a risk factor for a disease?

A. That would be an epidemiological study. We've not conducted epidemiological studies.

(Fast forwarding.)

Q. Does the technology exist where if a tobacco company decided to add nicotine to its product, it could do so?

A. Well, I think the technology would exist, yes.

(Fast forwarding.)

Q. Can you conceive of any experiment, research, that would satisfy you and cause you to say that, yes, that experience proves to me that cigarette smoking causes lung cancer?

A. Can I conceive of an experiment? I don't know that I can conceive of a single experiment. I can certainly conceive of a number of experiments. One experiment that would be important is production of human-type lung tumors in animals. Lung tumors, I'm speaking of malignant lung tumors.

Another would be an in-depth understanding of the mechanism of the disease, and how tobacco smoke or its components would play a role in that mechanism.

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25 Those are the critical missing areas in ter
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of determining whether cigarette smoking is causative in the disease.

Q. How come those studies haven't been done?

A. Animal experiments have been done and they have not produced tumors in animals of the type in human lung cancer. This is one of the pieces of information that I would take as not supporting the idea that cigarette smoking is a cause of lung cancer. So that experiment has been done.

The other one relating to the mechanism and understanding of cancer -- this is something that everybody has been working on. Not everyone, but scientists have been working on for years. They're beginning to understand in more depth the cellular reactions and the cellular processes that are ongoing. The role that certain genes play is beginning to be understood. But it's far from complete at this juncture.

Q. What is the Center for Indoor Air Research?

A. It's an organization that is devoted to sponsoring research, and it relates to indoor air quality with the exceptions of asbestos in indoor air and radiation in indoor air.

Q. Is it correct that the data collected by the

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25 Center for Indoor Air Research is frequently used by

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the tobacco industry to oppose bans on smoking?
A. I don't recall that, no. What I recall is investigators who have been funded by the Center for Indoor Air producing results and publishing the results. And at least one of them has testified before an OSHA committee -- OSHA hearing, excuse me.
Q. At one time you were the chairman of the board for the Center for Indoor Air Research?
A. That's correct.
Q. During what time frame was that?
A. I can't remember the exact dates, but I would say late '80s to a couple of years ago. So about '94.
(Fast forwarding.)
Q. Can you conceive of any responsible physician today telling a patient, you know: I think it's -- I recommend you take up smoking?
A. I can certainly think of some risk factors that are lowered among smokers. Whether or not a physician would recommend, that is something I can't say, but --
(Fast forwarding.)
Q. What have you done specifically to prepare for this deposition today? What have you read? How

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many meetings have you had?

A. I read my prior testimony or my prior

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deposition with you. I've had three sessions with the attorneys, I think of about two hours each: two with David Hardy and one with David -- plus David Ross.

Q. And what was the format of those sessions?

(Fast forwarding.)

A. The format was sitting around the table. I don't know what you mean other than that in terms of --

Q. Well, were questions asked of you along the line of questions that I might be asking you, and you responded to those questions and then your responses were critiqued? Was that the format?

A. I don't recall a critique of my response, but there were some anticipation of questions that might be asked, yes.

Q. Now, you mentioned three sessions. Other than Mr. Hardy and Mr. Ross and yourself, was anyone else present during any of those three sessions?

A. I believe James Wilson was in and out of the room on a couple of sessions.

Q. And where did those meetings take place?

A. Two of them took place at Lorillard's headquarters here in New York. And one of them at th

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Regency Hotel.

Q. Here in New York?

A. Here in New York.

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(Fast forwarding.)

Q. As I've understood your testimony --

(The videotaped deposition was paused.)

MR. NEWSOM: Your Honor, I believe that sentence was deleted.

THE COURT: Give me the page, please.

MR. NEWSOM: It's Page 92.

THE COURT: Should start with 15 or 16.

MR. NEWSOM: No. I think it starts with the words "you could" on Line 20.

THE COURT: Wait a minute. Well, considering -- yes, that would be the place to start, I guess.

No, I think what it should be is Line 19 and most of 20 is out, up until "you could."

VIDEOGRAPHER: Starting at "you could"?

THE COURT: All of 19 is in. And start with "you could."

VIDEOGRAPHER: All of 19 is in, Your Honor?

THE COURT: Yes, Line 19. And then you cut out --

VIDEOGRAPHER: Okay.

THE COURT: And start with "you could."

VIDEOGRAPHER: Okay.

(The videotaped deposition was continued.)

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25 Q. As I've understood your testimony, you coul
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never prove that smoking caused cancer in a particular individual; it's just not proven?

A. For that individual's case, you can never know all of the circumstances, that is correct, in my judgment.

Q. Okay. Because so many of these other causes are simply unknowable?

A. That's correct. Unless you understand the details and mechanism of the disease, then you can.

Q. Well, that's what everyone has been researching all these years?

A. That's correct.

Q. And we still don't have definitive answers?

A. We're not there, correct.

Q. Now, I'm going to be handing you a document dated August 30th, 1978, from T.L. Achey, A-C-H-E-Y, Field 3, to Mr. Curtis Judge.

And we will mark this as Plaintiffs' Exhibit 3.

(Fast forwarding.)

Q. Who was T.L. Achey?

A. Achey.

Q. Yes. I figured I was pronouncing it wrong.

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A. He was, I think, a field sales executive.

Q. And who was Curtis Judge?

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A. He was the president of Lorillard at this time, 1978.

Q. What was your position with Lorillard in ’78?

A. I believe I was senior vice-president, operations and research.

Q. Look at the third paragraph of the first page of this letter. And read along with me.

Quote: "This success of Newport has been fantastic during the past few years. Our profile taken locally shows this brand being purchased by black people all ages, young adults, usually college age, but the base of our business is the high school student."

Have I read it correctly?

A. Yes, you have.

Q. Does that not mean that most of the people smoking Newport are high school kids?

A. No. I don’t interpret it to mean that.

Q. What do you interpret it to mean: "The base of our business is the high school student"?

A. I don’t think "base" means numbers. And I don’t know exactly what it does mean, but I can speculate.

Q. What’s your speculation?

A. That is, that there are some high school

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25 students who are smoking Newport. And that this

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represents some future business for Newport.

Q. And that's from a sales standpoint, from Mr. Achey's standpoint; he's basically bragging to Mr. Judge about that; I mean, that's great news for Lorillard, we've got these high school students that are smoking Newport and hopefully they're going to become life-long Newport smokers, which is obviously good news to Lorillard, isn't it?

(Fast forwarding.)

A. Well, I can only read the document in terms of what it says. And to me he's saying it's fantastic in terms of Newport's success over the last, past few years. And then he goes on to profile who is smoking Newport.

Q. And he goes on to say that the base of that success, the base of our business, is the high school student?

A. He says the base of the business is the high school student, but he doesn't say that's the base of the success.

Q. Certainly nothing in this letter, Dr. Spears, which indicates that high school students should not be

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smoking?

A. Not in this letter, no. Let me finish reading it, if I may.

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(Fast forwarding.)

Q. Now, Plaintiffs' Exhibit 4, a letter from Oak Ridge National Laboratory to you, dated March 22, 1985.

COUNSEL: Could you read the date again, please?

Q. This letter from Oak Ridge National Laboratory, March 22, 1985 to Dr. Spears, do you remember getting that letter?

A. Generally, yes.

Q. The Frank Statement to Cigarette Smokers refers to the Tobacco Industry Research Committee. Did the Tobacco Industry Research Committee exist before A Frank Statement to Cigarette Smokers, I mean, that time frame, '53, '54?

A. Are we talking about the Industrial Research Committee, a subcommittee of the Council for Tobacco Research?

Q. Okay. My understanding is that during about 1954, as I read A Frank Statement to Cigarette Smokers, the Tobacco Industry Research Committee was established. And I'm --

A. As a forerunner for the Council for Tobacco

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Research.

Q. That’s my understanding.

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A. Yes.
Q. That eventually the Tobacco Industry Research Committee became the Council for Tobacco Research?
A. All right, yes.
Q. So what I'm asking you is: Prior to the publication of A Frank Statement to Cigarette Smokers, which I think occurred in January of 1954, was there any comparable organization to either the Council for Tobacco Research or the Tobacco Industry Research Committee?
A. I do not believe so.
Q. Okay. Now, you served on the board of the Council for Tobacco Research, correct?
A. Rather recently, yes.
Q. Are you still?
A. Yes, I am.
Q. Presently?
A. Yes, I am.
Q. The board of directors?
A. Board of directors.
Q. Okay. And how many individuals are on the board of directors of the Council for Tobacco Research?
A. There are two from each member company, plus the president or chairman of the organization, which

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currently would be nine, I guess.

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Q. And how long have you been on the board of directors?

A. About seven or eight years.

Q. Have you ever been the head of the board of directors?

A. No. It’s chaired by the chairman or president of the organization.

Q. Okay. What is the essential role or mandate of the Council for Tobacco Research?

A. To investigate diseases that are associated with smoking and health, understanding of the diseases, and any potential role that smoking may play.

Q. And how is their research conducted?

A. They have a Scientific Advisory Board. The Scientific Advisory Board reviews proposals that are submitted by independent investigators. And the advisory board determining whether or not -- they rate these different applications in terms of their relevance to the mission of the Council for Tobacco Research and their scientific merit, and indicates whether they should be funded or not in terms of -- in terms of funds being available.

In other words, to the extent that the budget

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will permit, they determine the funding of the projects.

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Q. Does the board of directors decide, for example, here's a proposal, we'll fund this, here's proposal B and we're not going to fund this; is that the essential role of the board of directors, to decide what research projects to provide money for and which ones to turn down?

A. No. The board of directors does not make any determination with respect to what is funded. They do make a determination as to the budget of the organization, total dollars. They determine benefit programs for the employees, salary of employees, particularly the chairman or head of the organization.

Things of that nature, that is, the business affairs of the organization and the overall budget.

Q. Once a decision is made to fund a particular project, does the researcher or the research organization have an absolute right to then publish its findings and make them available to the public at large?

A. An absolute right? I think they have the -- they have the right to submit their work.

Q. For --

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A. For publication.

Q. Okay.

A. It’s up to the journal as to whether or not

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that publication is accepted for publication --

Q. Is it --

A. -- with or without changes.

Q. Is it ever up to either the board of directors or the Council for Tobacco Research to make that decision?

A. It's never up to the board of directors, and I'm unaware of it being up to anyone within the council. That doesn't mean council members, not the board, but council members, staff, cannot comment on a manuscript that's submitted to them prior to publication.

Q. What are special projects?

A. That was a category of projects that I think had a variety of sponsors, so to speak, that were administratively handled through the Council for Tobacco Research, that is, the business aspect of them.

The special project funds to that investigator, that institution, were paid against -- paid against invoices submitted through the CTR. But these were not projects that were a part of the function of CTR in terms of its granting of research money to investigators.

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Q. What were the determining criteria which made a research project a special project as opposed to

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simply a normal kind of research project that was being funded generally under the umbrella of the Council for Tobacco Research?

A. Well, some that I personally recall was back before the Center for Indoor Air Research was founded.

There were some projects that related to indoor air quality that were generated through contacts and members of the industry. And when those projects were funded outside of the Council for Tobacco Research, that was done independently by the individual companies, sometimes by a law firm, through a law firm or with a law firm. And being outside the general mission of the CTR, but CTR was a convenient place to house and administer the funds with respect to that special project.

Q. Why would law firms be involved?

A. Well, law firms, I think, were also involved in seeking out and finding certain projects that they thought would be instructive with respect to future litigation and preparing themselves in the science field.

Q. Lawyers would be involved at least partially to assist in the defense of their tobacco company

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clients when a claim was made that cigarette smoking caused cancer or some other disease?

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A. No. I think the projects that I recall were -- well, I mentioned some that refer to indoor air. Others may have been investigators that had some alternate theory that was appealing to a law firm in terms of its education in the field, exploring alternate hypotheses. Any of these kinds of things that were educational to them, and nonetheless seemed to be valid research, could have been under a special project.

Q. Did you ever have anything personally to do with deciding whether something would be under the category of a special project or not?

A. I reviewed -- I, in the past, I have reviewed some of the proposed special projects for their scientific merit. And commented to them with respect to that.

Q. And there were times in your career where you would have said, yes, I agree, this should go into special -- this should be a special project?

A. I would have said that this is a good -- this merits investigation; I believe it's a good scientific proposal; it has merit and we should do it.

Q. Have you had an opportunity to read

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Plaintiffs' Exhibit 4, the letter to you of March 22, 1985?

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A. The letter. Not in detail, but.
Q. It's basically short. From Mike Guerin, G-U-E-R-I-N?
A. Guerin, yes.
(Fast forwarding.)
A. Are you going to ask me about the work scope or the other projects? He's talking about two different things.
Q. What two things is he talking about?
A. The first paragraph he's talking about something that he's going to submit to the CTR USA; and the second, he's learned some of his colleagues have available a house in the area where you could look at some -- that homes are available for study of indoor air.
Q. Okay. The very first sentence he says -- and by the way, what is this gentleman who wrote to you in terms of his degree or field of expertise?
A. Well, he is a Ph.D in analytical chemistry and he was section head of the organic chemistry section at Oak Ridge when he wrote this.
Q. Okay. And the first sentence says, "I am enclosing a work scope based on our discussions with

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you and Tony here on March 15th." Who is the Tony he's referring to?

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A. I don't know the name of Tony's last name, but I think he is referring to a person who headed up a section here that was looking at indoor air quality related to these homes in Tennessee Valley area. Oak Ridge had established, as I recall, a research complement of people who had developed the analytical capability of measuring -- taking measurements in indoor air.

Q. The third sentence in the first paragraph says, "A version revised per your instructions will be prepared for submission to Council for Tobacco Research USA, Inc."

A. Yes.

Q. What were your instructions in terms of a revision?

A. I have no idea.

Q. Now --

A. This was 1985. I don't recall.

Q. The work scope of what was being submitted to the Council for Tobacco Research was methodology for quantitating exposure to inhalable ambient tobacco smoke, correct?

A. That's what it says, is the title.

Q. Now, inhalable ambient tobacco smoke, is th

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another name for passive smoke or secondhand smoke?

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A. Yes. I think this means environmental tobacco smoke, yes.

Q. Okay. Was this work scope ever, in fact, funded by CTR?

A. I don’t know.

Q. Now, in the next to last sentence of the letter, he says to you, "Please let me know whether we should submit the work scope as it is to the CTR USA Inc. or whether further detail is necessary."

A. Yes.

Q. Do you remember how you responded to that?

A. No, I do not.

Q. Is this a fairly typical letter in the sense that someone who is preparing a submission for CTR would ask you, or some other tobacco executive, for your input as to how to get favorable -- a favorable funding response to a given proposal? Or is this an unusual letter?

A. This is an unusual letter in the sense that Michael Guerin knew me personally. We had served on the Tobacco Working Group together for quite a few years. I had been to site visits to this laboratory as part of that Tobacco Working Group. So he knew me

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quite well.

He submitted this proposal possibly to

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Lorillard initially. At least that has happened in some instances. I'm not a hundred percent sure in this instance. And I believe I then deferred it to -- suggested to him that he submit it to the Council for Tobacco Research rather than to one company, namely, Lorillard.

And this work scope was a subject of interest in the environmental tobacco smoke area. It preceded the formation of the Center for Indoor Air Research.

And I have no idea what the Council for Tobacco Research did with this proposal, whether it went to the Scientific Advisory Board, but that's where it should have gone. And I do not recall it being funded by the Council for Tobacco Research.

Q. You don't recall one way or the other?

A. I'm pretty sure it was not funded.

Q. That it was not. Do you know the reasons why it was not?

A. No. That would have been up to the SAB.

Q. Was it usual for a good friend of yours to submit research to the council, to the Council for Tobacco Research, supposedly an independent body?

A. Sure. I mean, that's an application. It's

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up to the body whether they fund it. I mean, anybody can submit an application.

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Q. Does the Tobacco Working Group still exist?

A. No, it does not.

Q. What was the time frame of its existence, approximately?

A. Late ’60s to late ’70s, about ’78, ’79.

Q. What was it and what was its purpose?

A. Well, it started in ’68, I think, as under the lung cancer task force of the NCI. It became known, I think, as a less hazardous cigarette working group. And as time went on, the designation was changed to the Tobacco Working Group. And it was basically an advisory panel to the NCI organization. NCI had a separate funding for this activity.

And I believe the Heart, Lung and Blood Institute also at one time had some funding for this activity, was a participant in it. But the Tobacco Working Group itself was a collection of individuals, including myself, from the tobacco industry to basically advise on their program in terms of technical advice, scientific advice.

Q. Did they ever come up with a less hazardous cigarette?

A. Not in my judgment, no.

Q. Has Lorillard conducted any research on a

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so-called safer cigarette? Or have you ever

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test-marketed such a product?

A. We have not test-marketed a product that you would define in that way. We have certainly conducted a lot of research into the subject.

Q. And what's been the bottom line of that research?

A. We have generated a lot of knowledge. I think we have not generated anything that we recognize as being different from the products that we make today.

Q. Does a filter make a cigarette safer, when you compare a filtered cigarette with an unfiltered cigarette? Would it be accurate to say that the filtered cigarette is less hazardous to health?

A. I think that's the same answer I gave you earlier when you raised the question on our highest tar cigarette versus our lowest tar cigarette. I do not consider the higher tar cigarette unsafe, nor the other one safe. I think they're both in the same category with respect to the consumer.

Q. And an informed consumer in your judgment should know that?

A. I don't think the tobacco companies, and certainly not Lorillard, has made a representation th

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there is a difference between these cigarettes in ter
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of safety or lack thereof.

Q. Plaintiffs' Exhibit 5.

(Fast forwarding.)

Q. This is a letter, a Lorillard memorandum, May 4, 1976, from Minnemeyer to Schultz, subject: Nicotine augmentation project.

Without -- for the moment, without getting into the document, the word "augmentation" means what, in common usage?

A. Means increase generally.

Q. Who is Minnemeyer?

A. Minnemeyer was director of research for Lorillard at this time.

Q. The number one research person in '76?

A. No. Schultz was the number one research -- he was the vice-president.

Q. Okay. So Schultz was the top man in research and Minnemeyer was the number two man in research --

A. That's --

Q. -- in 1976?

A. That's correct. There would have been a peer of Minnemeyer in development.

Q. Okay. The first sentence: "Introduction: Recommendations from health-oriented agencies and

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25 pressure from competitive companies make it imperativ
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that Lorillard develop a flavorful cigarette deliveri ng lower tar, while at the same time delivering a level of nicotine higher than could be obtained normally by conventional cigarette construction.

"This goal is almost an absolute necessity for brands delivering less than 8 milligrams of tar. If achieved, the technology may be applied to all classes of cigarettes to achieve lower tar delivery while maintaining or enhancing current nicotine levels."

Now, tell me if my interpretation of this i s correct or incorrect. As a nontechnical person witho ut a great deal of knowledge as to the manufacture of cigarettes, I am interpreting this language to mean that the goal being discussed by Minnemeyer with Schultz is how to have a cigarette with relatively lo w tar and relatively high nicotine; is that interpretation accurate or is it not?

A. I think that’s correct.

Q. Okay. Now, toward the bottom of the first paragraph, Mr. Minnemeyer says, "To reach the objectives deemed necessary by marketing and endorsed by higher management within the proposed timetables

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requires a highly concentrated effort of the highest priority by the research department."

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Have I read that accurately?

A. Yes.

Q. Okay. Now, you were part of higher management at this time, weren't you?

A. I would have been, yes.

Q. And do you agree that that was an objective deemed necessary by yourself as well as others in higher management?

A. At that time, yes.

Q. Why did that ever change, if it did, that objective?

A. The research we're talking about was stimulated by, it says, health-oriented agencies, and there were -- including the, I think, the NCI at this time --

Q. NCI, the National Cancer Institute?

A. National Cancer Institute.

-- suggesting that people would smoke less, be exposed to less tar, if you had a cigarette that was relatively higher in nicotine than the present-day cigarettes with the same tar, with the belief that people's smoking was regulated by nicotine.

That same sort of thing was proposed by some of the health-related investigators in Europe as well,

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Russell being one that I recall offhand.

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So this was really responding to the suggestions of some of the government-related health individuals at the time and the proposals they were making.

This was a research activity that was undertaken and was basically a failure in the laboratory; not that you could not increase nicotine in the laboratory by some of the methods that are probably described in this memo as possibilities, but that the product itself was unacceptable from a consumer point of view, from a taste point of view, overall smoking quality point of view. Then the program was abandoned a couple of years later.

Q. So it was a failure in the sense that low tar, high nicotine cigarettes didn't taste very good?

A. They did not taste very good.

And then secondarily, I think the suggestion by the government, some of the individuals representing public health, began to disappear in their belief that this was a good approach to a less hazardous cigarette in their viewpoint.

Q. Well, when Minnemeyer says in the first

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sentence that recommendations from health-oriented agencies and pressure from competitive companies make it imperative that Lorillard develop such a cigarette ,

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would I be correct in assuming that what he's referri
ng to is that's what the other companies, the other tobacco companies, were trying to do as well?

A. It would seem that that was a likely assumption on his part. But I don't think we ever had any information that suggested they were doing it.

Q. Okay. Now, Page 2 in the middle, the heading is Nicotine Addiction.

A. Addition.

Q. I'm sorry. Addition. Wishful thinking on my part. I love that title. But I'll take Nicotine Addition.

Following along with me: "One of the most obvious ways to deliver additional nicotine in a low tar cigarette is to add nicotine from an outside source to that naturally present in cigarette tobaccos."

And once again, my question to you is: Technically, that can be done without any difficulty, adding nicotine from an outside source?

A. I wouldn't say without any difficulty, but it would be technically possible to do it, yes.

Q. And as a matter of fact, Lorillard did it and the problem was that the product didn't taste good, n

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that it couldn’t be done technically?

A. Lorillard never did it commercially.

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Lorillard did it in a laboratory experiment, which is not a commercial process at all.

Q. But who decided -- was it just the researcher decided that the taste was not --

A. Yes. The researchers made that determination, that this was not a viable concept

Q. Continuing: "The added nicotine may be incorporated in the reconstituted leaf or may be applied to the whole blend."

And again, that’s something that can be done technically?

A. Technically, yes.

Q. Okay. "The problem is one of finding a source of the additional nicotine and determining how to apply it in an economical and safe manner, so as to result in a satisfying smoking article."

And as I understand it, what you’re telling us, Dr. Spears, is that problem was not ever overcome and that’s why it was abandoned?

A. The problem was not overcome and it was abandoned in the research laboratory, yes.

Q. Now, go to Page 3 under the heading Special Leaf Processing Source.

A. Special Leaf Processing Source?

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Q. Yes, on Page 3.

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A. Yes.

Q. Okay. Quoting: "By licensing a procedure covered by a Reynolds' patent, it may be possible to take a given leaf line and partially extract the nicotine from it with freon. The leaf remaining would still be useful for cigarette manufacture in a classical product.

"The recovered nicotine would then be used in application to a low tar-enhanced nicotine brand. The advantages to this approach are that no additional leaf would be required and all products resulting from the procedure would be fully utilized."

When this was going on in the research laboratory at Lorillard, were you involved to any extent?

A. This is basically a research proposal. In other words, he was proposing various -- he was advancing various ideas that would augment nicotine, by which one could augment nicotine in the finished product. This is just a list of his ideas and suggestions of research that might be undertaken. Not all of it was undertaken; some parts of it, I think.

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Q. Now, the --

A. For example, there was never anything undertaken in this area that I recall.

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Q. The last line on Page 3 where there's a reference to the intensely poisonous nicotine, is nicotine poisonous?

A. Everything is poisonous at some concentration, but nicotine is poisonous, yes.

Q. The more nicotine, the more poisonous?

A. No. At some dose nicotine is a poison. Obviously, it's not poisonous at the levels that you're getting smoking.

(Fast forwarding.)

THE COURT: What page are you on?

VIDEOGRAPHER: 120.

Q. Now, on Page 4, toward the bottom of the first paragraph, Minnemeyer says: "Very importantly, since the most feasible approach now appears to be covered by a Philip Morris patent, consideration must be given to either novel approaches to incorporating nicotine in RL, or we may have to license the technology from Philip Morris."

What technology from Philip Morris?

A. I think they have some patents that relate to production of reconstituted sheet using some ammonium salts that freed the pectin in the sheet and act as a natural adhesive in terms of forming the sheet. And I

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gather that’s what he’s referring to.

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Q. Does this have anything to do with nicotine, this patent, the separation of nicotine or any other aspect of nicotine?

A. Not that I recall, no.

Q. On Page 4, under the heading Chemical Treatment, quote: "An alternate approach is to treat the tobacco, which has its nicotine naturally tied up in the form of nicotine salts, with a stronger base than nicotine, such as ammonia. Ammonia would then displace nicotine from its salts, giving ammonium salts and free nicotine. Free nicotine in smoke would have a much greater physiological effect than nicotine salts."

Is that a true statement?

A. I don't believe so. I think that was speculation on his part.

It would be true that ammonia would displace nicotine from its salts, because ammonia is a stronger base than nicotine. However, in the processing, where you go through a number of steps of heating and drying tobacco, you would tend to lose a lot of the free nicotine in your drying operations so that you would have a net loss of nicotine in such a process.

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And free nicotine in smoke having greater physiological effect than nicotine salts I think is total speculation on his part.

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Q. You saw this document at the time, didn't you?
A. I would think so, but see if it says I did.
Q. You may not --
A. No. It doesn't say that I did.
I was aware of the research that was undertaken. I'm not sure I was aware of his treatise on what approaches he thought might be undertaken.
Q. Page 5, under the heading Decreasing the Acidity of Smoke, now going to the second sentence in that paragraph, quote: "Free nicotine has a greater physiological effect and it is this effect we want to achieve without sacrificing taste. We know many successful competitive products have higher smoke pH than Lorillard products. This area offers very rewarding returns for the effort involved as a partial solution of the overall problem."
What is the overall problem he's referring to in the context of this document?
A. I think the overall problem he's referring to is augmentation of nicotine.
Q. Okay. Now, when he says, "Free nicotine has a greater physiological effect and it is this effect

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want to achieve without sacrificing taste," why would

tobacco company want to achieve this greater

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physiological effect if it didn't want to hook a customer and make them a life-long customer?

A. Well, I don't know what he means by physiological effect, but free nicotine does not have a different physiological effect than nicotine in the salt form.

The difference is that the rate of absorption through certain tissues is much faster for the free nicotine than it is nicotine as a salt.

So we're really talking about the rate of absorption, and therefore more or less nicotine.

Q. Now would he -- I'm sorry.

A. However, with cigarette smoking, he is in error, in my judgment, in that I'm unaware that anyone has shown, if you inhale tobacco smoke, whether it makes any difference as to whether or not you have free nicotine or you don't have free nicotine in terms of rate of absorption on inhaled tobacco smoke.

If you hold the tobacco smoke in your mouth like a cigar smoker and do not inhale it, then, yes, indeed the amount of free nicotine or the pH does determine the rate that it's absorbed through the oral cavity.

Q. Now, when he talks about many successful

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competitive products have higher smoke pH than

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Lorillard products, you would agree in the context the successful competitive products are those products with high nicotine content?

A. With high nicotine content. I don't think that's what he's saying. He's saying with higher pH. It says, "Many successful competitive products have higher smoke pH than Lorillard products." That's not synonymous with more nicotine.

Q. Toward the bottom of Page 5, about the 5th or 6th line from the bottom, beginning with the word "however": "However, with the product of the future and understanding of the factors affecting nicotine transfer assumes high importance and must be studied. Any way that can be found to increase nicotine transfer to mainstream smoke will result in considerable leverage."

What does he mean by "considerable leverage" in that context, or what do you understand him to mean?

A. I think this is another idea as to how one might increase nicotine in the smoke. And he's got the heading Reduction of Nicotine Pyrolysis. In other

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words, if you could reduce the amount of nicotine that’s destroyed in the burning cigarette, so that more of it would transfer to the smoker, this would be another way to increase nicotine. It’s another theory

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that he's advancing here that in his view should receive research attention.

(Fast forwarding.)

Q. I mean, this whole document is talking about ways in which to keep tar low and nicotine high?

A. That's correct. This is a research proposal. What I was talking about with Waxman has nothing to do with the research proposal. It had to do with commercial cigarettes.

Q. It was a research proposal which Lorillard was hoping would be successful, and it turned out to be unsuccessful?

A. Look, I make no apologies for research, for Lorillard doing research on its products, in terms of all aspects of it, including nicotine. They are the products and we should do the research, but that doesn't mean you commercialize it.

Q. But would you not agree, from a commercial business standpoint of a tobacco company in terms of pure dollars, that it is -- it would be a wonderful goal to have people dependent upon the nicotine so that by virtue of that dependence, addiction or whatever,

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they don’t smoke for two or three years, they smoke all their lives?

A. That wasn’t the goal of this. The goal of

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this was same nicotine, low tar. That was its messag
e
for this research.
Q. Same nicotine?
A. Sure.
Q. The man is talking about increase and
augmentation.
A. You're talking about something separate.
We're talking about a product that some of the health
agencies was saying would be a safer product, namely
one with lower tar.

How do you achieve lower tar? If they
compensate, if you lower nicotine and tar, the
suggestion is you don't lower them both; you keep the
nicotine the same or the smoker will keep nicotine th
e
same, and therefore, they will receive lower tar. If
you increase the nicotine level of the product, they
will smoke it for a lower nicotine level, the same
nicotine level, if you will, and they will receive
lower tar. That's the concept that's being explored
here.

Q. You would agree, would you not --
A. This has nothing to do with keeping people
addicted and hooked for lifetime, as you're suggestin
g.

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Q. You would agree, would you not, that there could never be and never has been a successful

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cigarette that did not contain nicotine?

A. To my knowledge there's only been one product that did not contain nicotine that was made of tobacco. There have been others made of lettuce and other kinds of vegetable leaves and marketed, which met no success.

The only one that was made of tobacco was -- that I'm aware of was Next by Philip Morris, and it did not succeed out of test market. Why it didn't succeed, I can't tell you. But I wouldn't base a theory on one example.

Q. Well, in the history of the world, there's never been a tobacco product, a cigarette, that was successful that did not contain nicotine?

A. Sure, but the corollary to that, there haven't been any attempts, except one.

Q. And the reason why there haven't been any attempts is because everyone in your business knows nicotine is the name of the game; nicotine is what cigarettes are all about; nicotine is why people smoke; isn't that true?

A. Nicotine -- nicotine is part of the reason that people smoke. I have testified that nicotine is a

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very important sensory factor in smoking. It’s a very important taste factor. And certainly I think people feel a certain satisfaction in smoking cigarettes with

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nicotine. I've never denied that. But that's not to say it's addicting.

Q. And the very last sentence on Page 5 is, "Conceivably, if we could even double nicotine transferee efficiently, the whole goal of the research program could be achieved."

Do you agree with that?

A. What he's saying, if you could increase the transfer of nicotine, you could achieve the result that he's talking about, higher nicotine to tar. So that would result in augmentation, yes. That would be true.

(The videotaped deposition was paused.)

THE COURT: Let's stop it there.

All right. We could take our break, since there's a natural break in the transcript anyway.

So it's 12:00. We'll take a lunch break and get you back here at 1:30.

(The jurors exited the courtroom.)

THE COURT: It's about halfway through, right?

MR. ROSENBLATT: A little more.

THE COURT: I've been reading the Mold deposition. The Mold deposition is 337 pages with no

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delineations.

MS. LUTHER: You don’t have our

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crossdesignations?

THE COURT: I'm just reading it to get a feel.

MR. HEIM: We probably want to argue whether Mold --

THE COURT: Should come in at all?

MR. HEIM: Yes, because it's in the Cipollone case where a lot of the defendants weren't parties.

MS. LUTHER: We tried to warn you on that.

THE COURT: I know, but it's interesting. That's an interesting one.

Okay. 1:30.

(A lunch recess was taken at 12:10 p.m.)

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